under the former National Bankruptcy Act of 1867, but more particularly under the present act, a creditor, in order to be permitted to make proof of his claim, must surrender his preference before the trustee has secured judgment against him for its amount.[3] And if the creditor, in litigating the validity of his preference, consumes the year subsequent to the adjudication in bankruptcy, within which according to section 57 *n* all claims must be proved against the estate, a later surrender will avail him nothing.[4]

In view of these facts it is somewhat surprising to find the Supreme Court of Missouri arguing that in order to avoid a preference, the trustee must make his demand a sufficient length of time before the expiration of the year prescribed in section 57 *n* "to afford the preferred creditor a reasonable time in which to surrender the preference and exhibit his claim against the estate." *Swartz* v. *Frank*, 82 S. W. Rep. 60. The court takes the ground that since the preference is not void, but voidable only, the creditor is justified in retaining it until demand by the trustee, upon whom rests the burden of taking the initiative. In support of this position it is to be remembered that the trustee cannot bring an action for the property given in preference until after demand and refusal.[5] On the other hand, there is no provision in the act which places a time limit of less than a year upon the right of the trustee to attack a preference; and with the possible exception of a case where great injustice would otherwise be effected, there can certainly be no argument in favor of interpolating stipulations by judicial decision. Preferences tend to subvert the chief object of a bankruptcy system by hindering the equitable distribution of the insolvent's assets. The Missouri doctrine would encourage them. The creditor would not only enjoy his present privilege of proving his claim after surrender of his preference upon demand; but if he could conceal his fraudulent advantage for one year, or perhaps even less, he would be absolutely safe from attack. A result so clearly opposed to the spirit of bankruptcy legislation should obviously be discountenanced by the courts.

THE RIGHT OF A PERSON TO TRADE IN HIS OWN NAME. — The enormous sale of articles obtained in recent years by extensive advertising of a trade name makes the question of one's right to the use of his own name in business of increasing importance. The writer of a recent article maintains that the law on the subject has undergone a change. *The Right of Trading in Your Own Name*, 23 Law Notes (Eng.) 205. The rule is frequently stated to be that apart from the use of an artifice in connection with a name, "everyone has the absolute right to use his own name honestly in his own business."[1] But the writer of the article referred to lays it down that the English Courts will now go further, and will restrain a person, though he be acting *bona fide*, from "using *any* name, or indeed, *any word*, in such a way as to trade on some one else's reputation." The cases cited in support of this position seem scarcely to go that far. In one case Jamieson and Co. of Aberdeen had established a reputation for making a

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[3] *In re* Greth, 112 Fed. Rep. 978; see Collier on Bankruptcy, 4 ed., p. 391.
[4] *In re* Rhodes, 105 Fed. Rep. 231.
[5] See *In re* Phelps, 3 Am. B. Rep. 396, 400–401.

[1] Russia Cement Co. *v.* Lepage, 147 Mass. 206, 208; Turton *v.* Turton, 42 Ch. D. 128.

good harness composition. The defendant, G. Jamieson, entered the business in Aberdeen under the name "G. Jamieson and Co." Due to the similarity of names alone, the defendant was getting trade intended for the plaintiff. An injunction was refused.[2] In another case the plaintiffs, the Valentine Meat Juice Company, had established such a wide reputation for their meat extracts under the name "Valentine's," that the court found that that name connected with meat extracts had acquired a secondary meaning, so that customers in asking for "Valentine's" always meant the plaintiff's goods. The defendant, the Valentine Extract Company Limited, was enjoined from using the name Valentine in any way in connection with a meat extract.[3] From these cases it appears that the test is, not whether the defendant is trading on the plaintiff's reputation, but whether he is doing so by "passing off" his goods as the plaintiff's. The defendant must use his name honestly in his business; he must not use it in such a way as to represent that his goods are the plaintiff's. In the ordinary case of similarity of names, he is not so doing, but when the plaintiff's name in connection with an article has acquired a secondary meaning, then it has become impossible for the defendant to sell under that name without representing his goods to be the plaintiff's.[4] The decisions in the American cases on this subject seem to be in accord with the foregoing principles.[5]

The notion that one has a special right to use his name in business because it is his own is erroneous. Smith has as much right to enter the soap business under the name Jones and Company as Jones has.[6] The cases cited above show that neither of them in using that name will be allowed to overstep the bounds of fair competition. It is not fair competition for a man even by the simple use of his name to pass his goods off as another's. It is not going much farther to say that it is not fair competition where the defendant, though the simple use of his name does not enable him to pass his goods off as the plaintiff's, is nevertheless, as in the Jamieson case, trading on the plaintiff's reputation. It is not fair to the plaintiff who established the reputation, nor to the public who are led to make the natural mistake of buying from the wrong man. On principle, then, the broad rule laid down in the article, that no one shall use any name so as to trade on someone else's reputation, seems desirable.

NECESSARY PARTIES. — The rules governing the joinder of parties as administered by the common law courts seem to be based upon the technical position of the parties rather than upon the actual interests involved.[1] Equity, however, adopts a broader principle and requires as parties all persons in any way interested in the result of the suit.[2] This is but an example of the desire of equity to do justice on the merits of each case, and by having all the parties before it make its decree a final adjudication

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[2] Jamieson and Co. *v.* Jamieson, 15 Rep Pat. Cas. 169.
[3] Valentine Meat Juice Co. *v.* Valentine Extract Co. Limited, 83 L. T. R. 259.
[4] J. and J. Cash Limited *v.* Joseph Cash, 86 L. T. R. 211.
[5] Singer Manufacturing Co. *v.* June Manufacturing Co., 163 U. S. 169; Walter Baker and Co. *v.* Baker, 77 Fed. Rep. 181.
[6] See Hopkins, Unfair Trade, § 51.

[1] Story Eq. Pl. 10th ed. § 76.
[2] Cockburn *v.* Thompson, 16 Ves. Jr. 325.